

Be firm with Hearing Disruptors



The purpose of a disciplinary hearing is to give the parties the opportunity to present all their evidence. The chairperson of the hearing is required to hear and understand all evidence presented so that he/she can properly take it into account on completion of its presentation.

Later in the process, if the verdict is guilty, the chair must decide on the corrective action most appropriate to the circumstances. However, this key task is more difficult to achieve if the chair's collection of the evidence is hampered unduly. Such obstacles could, for example, include the absence of key participants, unjustified objections raised, unnecessary adjournments and disruptive behaviour by the parties at the disciplinary hearing.

ABSENCE OF KEY PARTICIPANTS

Participants in a disciplinary hearing would typically include the following:

The presiding officer, the accused, the accused's representative, the complainant (person bringing the charges on behalf of the employer), an interpreter (where required), witnesses and a scribe. Sometimes a HR advisor also attends for procedural reasons.

Where the accused fails to attend, continuation of the hearing in his/her absence should only be considered as a possibility if it is established that the employee has chosen not to attend without good reason.

The employer must, at the outset, ensure that the accused's representative and witnesses are released from duty in order to be at the hearing. The employer must also offer to arrange for an appropriate

interpreter if the hearing is not being conducted in the accused's home language.

OBJECTIONS

Where parties raise procedural objections the chair must give these serious consideration, assess their validity and deal with those problems that merit correction.

ADJOURNMENTS

Such interruptions may be necessary where parties need time to consider responses to issues raised during the hearing. Chairs need to be expertly trained to know how to evaluate each such request and to decide whether it would be proper to grant them or not. Also, chairs might themselves need adjournments, in order, for example, to consider objections or proposals raised by the parties.

DISRUPTIVE BEHAVIOUR

Complainants seldom, if ever, behave intentionally disruptively during disciplinary hearings because an orderly hearing is in the best interests of their goal to prove the employee guilty. Therefore, while the complainants might use underhand tricks, disruption of the process is unlikely to be amongst them.

However, where the accused and his/her representative know that he/she is guilty and that they have no legitimate way of defending the charges, it may happen that they use disruptive tactics such as walk-outs, shouting, threats, hammering the table or toyi toyi-ing. Such parties trade on the fact that the accused has a basic right to be present at his/her hearing and for his/her representative to be present as well. They may behave badly in the hope of either having the hearing scrapped altogether or with the aim of getting evicted from the proceedings. Such eviction could then be used at the CCMA as grounds for procedurally unfair dismissal.

Only properly skilled chairs will be able to deal with such disruptive tactics. On the other hand, untrained chairs may mishandle such behaviour in the following ways:

- Try to ignore the disruptions regardless of the harm they cause. A danger of this approach is that the complainant could be distracted from presenting a full and fair case. Also, witnesses could feel intimidated and the chair could lose concentration.
- Lose his/her temper and become abusive, thereby adding to the disruption. This is unprofessional and plays into the hands of the perpetrators.
- Immediately evict the accused or representative. This would be too hasty a remedy and could result in the employee succeeding at the CCMA with an unfair dismissal case. While lack of space does not allow elaboration, chairs need to be given intensive training on hearing control strategy. Such strategy includes a graduated, cautious yet firm and effective approach towards ensuring an orderly and evidence-friendly disciplinary hearing.